

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY
STATE OF TENNESSEE**

**LEAGUE OF WOMEN VOTERS OF
TENNESSEE;
ALLISON CAVOPOL;
CAROL COPPINGER, on her own behalf and
As next friend of SAMUEL SHIRLEY;
REVEREND JERRY CRISP;
TOM JOHN, M.D.;
TERRELL McDANIEL, Ph.D.;
BRIAN PADDOCK;
RANDALL RICE;
MERYL RICE; and
REVEREND JAMES THOMAS,**

Plaintiffs,

v.

**JULIE MIX McPEAK, Tennessee Commissioner
of Commerce and Insurance;
TENNESSEE DEPARTMENT OF
COMMERCE AND INSURANCE; and
ROBERT E. COOPER, JR., Tennessee
Attorney General and Reporter,**

Defendants.

No. 13-1365-IV

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RESPONSE IN OPPOSITION TO MOTION FOR RESTRAINING ORDER

Comes now the Office of Tennessee Attorney General and Reporter, on behalf of the Defendants, Julie Mix McPeak, Commissioner of Commerce and Insurance, the State of Tennessee Department of Commerce and Insurance, and the Attorney General, in their official capacities, (collectively the "State" or "Defendants") to oppose the demand for issuance of a restraining order contained in the Verified Complaint filed in this action on Friday, September 27, 2013. The Defendants oppose the issuance of the proposed restraining order because the

order fails to meet the requirements outlined by Tennessee Rule of Civil Procedure 65 and would prevent the timely and continued effective implementation of the Emergency Rules of the Department, Chapter 0780-01-55, entitled *Navigator, Non-Navigator Assistor and Certified Application Counselor Registration Requirements* (“the Rules”), designed by the Commissioner to regulate the navigators defined and as expressly contemplated by Tenn. Code Ann. §§ 56-6-1201 to -1205, authorized by Chapter 377 of the 2013 Tennessee Public Acts (PC 377) under the federal health reform law referred to in PC 377 as the Patient Protection and Affordable Care Act (PPACA) also called the ACA.

STANDARDS FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER

Tenn. R. Civ. P. 65.03(1) governs a trial court’s determination of whether to grant a temporary restraining order and provides as follows:

When Authorized. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney *only if*:

(A) specific facts in an affidavit or a verified complaint *clearly show that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition; and*

(B) the applicant's attorney (or pro se applicant) certifies in writing efforts made to give notice and the reasons why it should not be required.

(emphasis added). The issuance of extraordinary injunctive relief is a drastic remedy, and one that should not be granted unless the movant, by clear and convincing evidence, carries the burden of persuasion. *See generally Garlock, Inc. v. United Seal, Inc.*, 404 F.2d 256, 257 (6th

Cir. 1968). *See also* Wright, Miller & Kane, *Federal Practice and Procedure*: Civil 2nd § 2948 at 12-9-133 (1995).¹

Tennessee courts have stated as follows concerning the appropriate test in the related context of temporary injunction relief:

“The most common description of the standard for [temporary restraining order] in federal and state courts is a four-factor test: (1) the threat of irreparable harm to plaintiff if the [restraining order] is not granted [before the opposition may be heard]; (2) the balance between this harm and the injury that granting the [restraining order] would inflict on the defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.”

S. Cent. Tenn. R.R. Auth. v. Harakas, 44 S.W.3d 912, 919 (Tenn. Ct. App. 2000) (quoting Robert Banks, Jr. & June F. Entman, *Tennessee Civil Procedure* § 4-3(1) (1999)).

A specific finding of immediate and irreparable injury to the movant before the opponent may be fully heard is considered the most important prerequisite that a court must examine and find when ruling upon a motion for a temporary restraining order. In fact, the absence of irreparable injury must end the court’s inquiry. *See generally City of Los Angeles v. Lyons*, 461 U.S. 95, 111-112 (1983) (denying a preliminary injunction). Furthermore, such “[i]rreparable injury must not be fancied, or a matter of inconvenience, but must be real and practically unavoidable, and certain to follow.” *Kelly v. Connor*, 123 S.W. 622, 636 (Tenn. 1909). Thus, injunctive relief should not issue to address injury that is remote, contingent, may never accrue or merely to relieve the fears or apprehensions of an applicant. *Nashville, C & St. L. Ry. v. R.R. & Publ. Utilities Comm’n*, 32 S.W.2d 1043, 1045 (Tenn. 1930) (internal citations omitted).

¹ Because many of our procedural rules have derived from federal procedural rules, the Tennessee Supreme Court has recognized that it is appropriate to consider federal courts’ interpretations of federal procedural rules that are analogous to our procedural rules. *See Knox County ex rel. Environmental Termite & Pest Control, Inc. v. Arrow Exterminators, Inc.*, 350 S.W.3d 511, 527, n.33 (Tenn. 2011) (citing *Cumulus Broadcasting, Inc. v. Shim*, 226 S.W.3d 366, 375 (Tenn. 2007)).

STATE'S OBJECTION TO RESTRAINING ORDER

The restraining order sought by Plaintiffs seeks to prevent enforcement of the Rules and PC 377. As far as can be determined from the Complaint, none of the Plaintiffs are even impacted by the Rules' enforcement, in that all but one express no wish to become navigators or certified application counselors (CACs), and their stated contexts for speech about the ACA apparently do not demand approval from the federal exchange.

A. **No Immediate or Irreparable Harm to Plaintiffs Pending a Hearing.** The Rules by their terms reach only CAC organizations, CACs, and anyone that is or should be an entity or individual navigator under the PPACA. But the Complaint works from its false legal premise, that the rules exempt only insurance producers from the definitions of navigator and CACs (Paragraph 64 and continuing throughout the Complaint). The second false legal premise is that federal law and regulations require activities by the CACs and navigators that the Rules prevent. Initially, the Plaintiffs' demand for a restraining order is without merit because it is wholly deficient and does not meet the standard for issuance of a restraining order under T.R.C.P. 65.03, and it is based on a pervasive misconception of the Rules. No irreparable harm is caused to Plaintiffs by delay in the interim before a full hearing of a motion for temporary injunction. On the other hand, the harm to the State and the public is substantial and far reaching.

The immediate impact of a restraining order would be to prevent the continued implementation and processing of the registration program and consumer protections arising from the registration of navigators and the subset of CACs found in the Rules, to prepare for the Tuesday, October 1, 2013 launch of the federally run insurance exchange, by the United States Department of Health and Human Services. Contrary to the assertion of the Complaint, federal

law does not prevent the imposition of the registration program or the state's imposition of background checks and other monitoring of persons and the entities acting as navigators and the CACs, as discussed below.

B. Irreparable Harm to the State and the Public. The State of Tennessee and the evident purpose of Public Chapter 377, embodied in Tenn. Code Ann. §§ 56-6-1201 to -1205, will be harmed if persons being certified by the federal exchange cannot be identified as they are moving into their consumer-interface role. The Rules expressly are directed to impose registration with the Department of Commerce and Insurance to provide a system for the insurance regulator to identify the authorized and qualified navigators and CACs to, among other things, weed out persons whose background might pose a threat of harm to the public. Indeed, the Department's conducting of such background checks is contemplated by both federal and Tennessee law.

The Department has been diligently working to process the applications, even where the federal agency has not certified all its own navigators and CACs, to timely review and approve a very elementary set of requirements. There are people who have applied and complied with the Rules and are able to facilitate enrollment in the exchanges right now. To simply thwart the will of the Tennessee General Assembly to protect the public, to stay the rules at this point is extremely harmful. It is even likely that the initial weeks of the program, when the public is confused, presents the point at which there is *greatest* importance for the State to know and be able to identify who are the authorized personnel. This allows for persons to have a State agency that answers insurance inquiries, to know who is an authorized person who might be contacting the public about the PPACA.

Moreover, requesting an order restraining any enforcement of PC 377 shuts down an express grant of power to the Commissioner over violations of state and federal law, and the enforcement tools granted expressly for cease and desist orders and injunctive relief in the courts related to violations of law.

With the problem of possible fraudulent activity, a good first line of defense is to accredit and determine at the beginning of the program those who are engaging in the program and to weed out any individuals or organizations whose background might indicate a propensity to engaging in fraudulent activity. Such up front verification may indeed be the best deterrent to prevent fraudulent activity. The federal government will make available to the public the names of all individual navigators, but will not release the names of the individual CACs.² Accordingly it is entirely appropriate, and contemplated by the federal regulations, and law, that there could be state regulation of those authorized by the federal government to assist persons seeking insurance on the Tennessee exchange.

The Defendants accordingly seek the opportunity to argue in response to the request for restraining order, and submit that such an order should not issue *ex parte*.

C. Plaintiffs Have Failed to Demonstrate a Substantial Likelihood of Success on the Merits.

1. Overview of PPACA and the Navigator System of Assistance Personnel

Navigators arise because of 42 USC 18031 (ACA 1311), called “Affordable choices of health benefit plans.” (See Tab D) PPACA was enacted on March 23, 2010 to reform America’s

² CAC organizations can request not to be on the HHS web site, and CAC organizations are not required to disclose how many individual CACs they intend to certify. (CAC QandA 66 and 68) in [common-qandas-about-cac-designation.pdf](http://marketplace.cms.gov/help-us/common-qandas-about-cac-designation.pdf), found at <http://marketplace.cms.gov/help-us/common-qandas-about-cac-designation.pdf> (See final Tab). Such FAQs and other guidance provide the HHS’s interpretation of its own regulations and such interpretations of a federal regulation by a federal agency are to be given great deference under *Udall v. Tallman*, 380 U.S. 1, 85 S.Ct. 792 (1965) and subsequent case law.

healthcare system. As part of this reform exchanges were created and envisioned to provide subsidized insurance to individuals, and navigators were create to assist such individuals in understanding their options under the exchanges. The federal government created navigators and the rules have built on this requirement to delineate the roles of navigators and CACs who perform several of the functions of navigators (CACs are not mentioned in PPACA itself and are solely a creation of the rules enacted pursuant to PPACA, and thus appear to be a subset of the “navigators” created by PPACA). *See* Tab D on federal law reference to navigators and Tab E for HHS descriptors of the functions of Navigators and CACs. CACs arise out of 45 CFR §145.225. 42 USC 18031 establishes that framework for American Health Benefit Exchanges (the exchanges), and for an Exchange to make grants to “navigators.” The duties of navigators are described in subsection (i). Section 18031 also provides in subsection (k) for a principle of not allowing an exchange to develop rules that conflict with HHS regulations: “**(k) Conflict** An Exchange may not establish rules that conflict with or prevent the application of regulations promulgated by the Secretary under this subchapter.”

2. Overview of PC 377 and the Necessity for Emergency Rules

The Emergency Rules are included in the appendix to the Plaintiffs’ Complaint at No. 5. In sum, the Rules establish a timely registration with the Department for persons who are to be designated or certified according to the federal exchange as navigators or CACs. The Rules are also directed towards persons performing those functions who fail to obtain the necessary federal approvals for the functions they are performing in the State of Tennessee in relation to people who seek health insurance coverage. The Rules exempt from coverage persons who are already licensed with the state or exempt from licensure as “insurance producers” under the relevant provisions of the Tennessee Code. Rule 0780-01-55-.09(2).

The Complaint, at paragraph 60, fails to recognize this limited definition of “navigator” in the Rules. The complete definition of “navigator” at 0780-01-55-.02(6) does not require the registration of persons whose activities do not require the testing and certification first under the federal law. This has the effect of removing concerns by Plaintiffs who have no interest whatsoever in acting in any of the federally described roles. As the rule specifically states:

(6) . **“Navigator” includes all persons listed in Tenn. Code Ann. § 56-6-1201(3), who are or should be certified as “navigators” under the federal Patient Protection and Affordable Care Act**, and means any individual or entity, other than an insurance producer licensed pursuant to Tennessee Code Annotated Title 56, who:

- (a) Receives any funding, directly or indirectly, from an exchange, the state, or the federal government to perform any of the activities and duties identified in 42 U.S.C. 18031(i);
- (b) Facilitates enrollment of individuals or employers in health plans or public insurance programs offered through an exchange;
- (c) Conducts public education or consumer assistance activities for or on behalf of an exchange; or
- (d) Is described or designated by an exchange, the state, or the United States Department of Health and Human Services, or could reasonably be described or designated as, navigators, “non-Navigator assistance personnel” or “in-person assistance personnel”, enrollment assisters, application assisters or application counselors including certified application counselors.

Rule 0780-01-55-.02(6) (emphasis added). The State submits that the federally regulated activities, the ones that require certification because of the activities being conducted, are delineated by the federal rules and further descriptions by the governing agency, in HHS, the CMS/CCIIO. Plaintiffs in this case are not impacted by the Rules at all, unless their activities require training and approval under *federal* laws. Because Tennessee is seeking to register those persons who do or should have their training and approval initially from the federal system, unless Plaintiffs come within that category, they are unaffected by the Rules.

For instance, the federal guidance to faith-based organizations such as those of the Plaintiff ministers shows the federal intent that such organizations and individuals must seek

federal approval to become CACs or a CAC Organization. From the HHS partnership center newsletter page (Tab C):

<http://www.hhs.gov/partnerships/resources/newsletter/081413.html>.

Faith-Based and Community Organizations Assist With Health Insurance Enrollment as Certified Application Counselor Organizations

Faith-based and community organizations can help millions of Americans get enrolled in health insurance starting on October 1. If your organization is interested in training your staff and volunteers to assist people in applying for health insurance coverage through the Federally-facilitated Marketplace (including a State Partnership Marketplace), you can apply to be a Certified Application Counselor (CAC) organization. CAC organizations provide services for free, there is no federal funding for CACs.

The conduct that the United States government expects to occur, and the limits on that conduct, provide ample reason for persons considering the assistor roles to be careful that they are complying with the scope of that federal role and no further, as well as complying with the state laws that prohibit persons other than insurance producers from selling, soliciting or negotiating insurance. The Commissioner through the Rules makes sure such persons who hold themselves out or act in such a way that the federal law would require their certification or designation, in fact get that certification. If a person fails to obtain such certification and approval, the Commissioner asserts the power to regulate and hold those persons in violation of the State law and the Rules.

Another misapprehension throughout the Complaint is that the prohibitions on conduct found in the Rule 0780-01-55-.06 prevent any activity that the federal government is specifically contemplating that such a person perform. Rule 0780-01-55-.06 Navigator and Certified Application Counselor Conduct states in pertinent part:

- (1) A navigator or certified application counselor may not:
 - (a) Engage in any activities that would require an insurance producer license;

- (b) Discuss the benefits, terms, and features of a particular health plan over any other health plans **and** offer advice about which health plan is better or worse or suitable for a particular individual or employer;
- (c) Recommend or endorse a particular health plan or advise consumers about which health plan to choose; or [...]

(Emphasis added).

The activities prohibited by the Rules are in fact prohibited by the federal system. Under federal standards, one cannot discuss terms of a particular health plan *and* couple it with advice about which health plan is better or worse for the individual or employer. To the extent there are complained-of effects on speech, these are the same prohibitions that the federal government has established by its own rule-based system, which does not authorize the persons designated as Navigators or CACs to sell, solicit or negotiate insurance.

The Rules are simply “parroting” and prohibiting the same conduct prohibited under federal rules promulgated under PPACA, no more nor less. This is true under both PC377 Tenn. Code Ann. § 56-6-1202, “no navigator shall sell, solicit or negotiate any policy of insurance” and preexisting law in Tenn. Code Ann. § 56-6-103 “A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this part.”

The United State Department of Health and Human Services has answered questions under its rules that show how the CACs are not to tread on the sale, solicitation or negotiation of insurance.

Excerpt from the HHS common-qandas-about-cac-designation.pdf, found at <http://marketplace.cms.gov/help-us/common-qandas-about-cac-designation.pdf> (See final Tab).

24. Are individuals able to become CACs in the FFM if they are not affiliated with a designated CAC organization?

ANSWER: No. in the FFM, they must be affiliated with a designated CAC organization.

* * *

35. May a designated CAC organization or an individual CAC recommend a specific QHP?

ANSWER: No. A CAC will help the consumer through the process of selecting a plan, and must give the consumer information about the full range of QHP options and insurance affordability programs for which they are eligible. *The CAC may not direct the consumer towards a specific plan* but may give the consumer information that allows the consumer to make an informed decision as to which plan is in the consumer's best interest.

36. Will the CACs be expected to assist consumers with enrollment in Medicaid/CHIP?

ANSWER: Yes. CACs are required to help consumers apply for and enroll in insurance affordability programs, which include Medicaid, CHIP, advance payment of the premium tax credit and cost-sharing reductions through the Marketplace. All of these programs will be covered in the training.

37. Can a CAC actually help an individual compare health plans, benefits, and carrier networks and assist the individual in choosing a health plan?

ANSWER: Yes, those are required duties of a CAC. But remember that *a CAC cannot actually choose a plan or enroll someone in a plan. A CAC may only assist with plan selection and enrollment*, and must provide this assistance in the consumer's best interest.

* * *

48. How does an agent or broker differ from a CAC?

ANSWER: Unlike agents and brokers, *CACs cannot charge consumers for their assistance and are not paid by health insurers to sell insurance. Agents and brokers are licensed by their state to sell insurance. CACs do not sell insurance, nor will they be enrolling individuals in health coverage, including QHPs offered through the Marketplace.*

The Rules allow the Department, the state agency responsible for the regulation of insurance business, to monitor and have visibility into the persons who will be interfacing with the public over a complex and weighty decision and a wholly new method to purchase or obtain health insurance coverage. Thus, the Department by enactment of these Rules will know who these persons are and will have appropriate insight into their character or criminal backgrounds that would otherwise debar a person from the business of insurance, such as under federal law 18 USC §1033, and State law, Tenn. Code Ann. § 56-53-106(b), and by analogy to some of the

insurance producer standards. If someone has not registered, the Department will also have a means to identify potential fraudulent activity. Furthermore, these Rules allow the Department to discipline a person for misconduct.

3. The Legislation and These Rules are Not Preempted by Federal Law

The federal law and the federal rules over federally defined navigators, assistance personnel and CACs, contemplates that state law will operate and state regulation is not *per se* preempted. 42 USC §18041(d) (ACA 1321), [the PPACA section that authorizes Exchanges and also authorizes federal operation of exchanges in states that do not elect or do not qualify with their state-run exchange 42 USC §18041(c)], states:

(d) No interference with State regulatory authority. Nothing in this title shall be construed to preempt any State law that does not prevent the application of the provisions of this title.

The Department of Health and Human Services in 45 CFR Part 155 *did not choose to occupy the field*, and in fact explicitly allowed state licensure and regulation. Rule 45 CFR §155.210(c)(iii): in Navigator Program Standards says: “Entities and individuals eligible to be a Navigator. (1) To receive a Navigator grant, an entity or individual must—. . .**(iii)Meet any licensing, certification or other standards prescribed by the State or Exchange, if applicable, so long as such standards do not prevent the application of the provisions of title I of the Affordable Care Act.**” (Emphasis added).

The Complaint simply ignores the possibility of state licensure as a federally approved requirement for navigators and even leaves the above provision that navigators must meet state licensing or certification standards out of the summary of the procedural requirements for federally defined navigators. Complaint, ¶¶ 36-42, p. 7.

The essence of the State's justification for the law and the Rules is that absolutely nothing about the federal system being imposed under the PPACA prevents a state from imposing certification or background checks on persons who perform the contemplated functions. The federal government, by their rules and 42 USC §18041(d), freely acknowledged that a state can choose to require these types of regulation.

The federal regulations likewise leave the insurance producer/agent licensing regimes intact, and expect them to be licensed if they perform functions that require such licensing in states. An agent or broker is defined in the federal regulations at 45 CFR §155.20 and "means a person or entity licensed by the State as an agent, broker or insurance producer." The term is used frequently throughout the rules. In 45 CFR §155.220, discussing the ability of states to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs, there are numerous provisions regarding such licensed agents' involvement, with subsection (e) providing:

Compliance with State law. An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and costs-sharing reductions for QHPs must comply with applicable State law related to agents and brokers, including applicable State law related to confidentiality and conflicts of interest.

Moreover, HHS creates a standard for termination for cause from the Federally-facilitated Exchange in section 155.220(g) wherein one reason an agent or broker may be determined non-compliant is if HHS finds that the agent or broker violated "iii) [a]ny State law applicable to agents or brokers, as required under paragraph (e) of this section, including but not limited to State laws related to confidentiality and conflicts of interest;" 45 CFR 155.220(g)(2)(iii).

Consistent with this point of view in the regulations and law, the HHS's administrator in charge of the Exchanges program has provided testimony to Congress that states have the option

to have background checks and scrutiny of their own of the navigators. *See* Gary Cohen, CCIIO Director, dialogue September 19, 2013 to House Energy & Commerce Committee. 53:20. (Disk provided to contain this testimony: taken from <http://energycommerce.house.gov/hearing/two-weeks-until-enrollment-questions-cciio>). *See* informal transcription of 53:20 and 1:20:20 at appendix.

...Gary Cohen: **The federal government has not required that background checks for the individuals be given, but some states have adopted that requirement, as they are permitted to do.**

1:20:20 GC: **We want to get as many – we had a number of factors. It was not clear to us that we have the authority to require the criminal background checks and we wanted to make – we left it up to the states to determine whether that was a requirement that they wanted to impose.**

4. Plaintiffs Lack Standing to Object to the Law or the Rules and Accordingly Have No Immediate and Irreparable Harm

Each of the Plaintiffs in this case lack standing to challenge either the navigator statute or the rules promulgated pursuant to Tennessee statute since the record is devoid of any evidence that any of the Plaintiffs have sought or intend to seek to be qualified by the federal government as a navigator or CAC, which are the only entities or individuals that Tennessee's regulatory scheme is intended to reach. This lack of standing is fatal to the Plaintiffs' claim that they have suffered irreparable injury in this case and in and of itself requires that this court deny their request for a TRO. Plaintiffs have not demonstrated they have standing to seek the requested injunctive and declaratory relief – as they are not within the scope of the challenged statute or Rule.

The well-established elements clearly required for a plaintiff to demonstrate standing are set forth in *ACLU v. Darnell*, 195 S.W. 3d 612, 619-21 (Tenn. 2006). As a threshold issue, the Tennessee Supreme Court found that “[c]ourts employ the doctrine of standing to determine

whether a particular litigant is entitled to have a court decide the merits of a dispute or of particular issues.” *Darnell*, 195 S.W.3d at 619 (citations omitted).

Grounded upon “concern about the proper—and properly limited—role of the courts in a democratic society,” *Warth [v. Seldin]*, 422 U.S. [490], 498 [(1975)], the doctrine of standing precludes courts from adjudicating an action at the instance of one whose rights have not been invaded or infringed.” *Mayhew v. Wilder*, 46 S.W.3d 760, 767 (Tenn.Ct.App.2001), *perm. app. denied* (Tenn. April 30, 2001).

Darnell, 195 S.W. 3d at 619-20.

The Tennessee Supreme Court’s directive in *Darnell*, is that to establish standing, a plaintiff must show three “*indispensable*” elements “‘*by the same degree of evidence*’ as other matters on which the plaintiff bears the burden of proof.” 195 S.W. 3d at 620 (emphasis added), *citing Petty v. Daimler/Chrysler Corp.*, 91 S.W. 3d 765, 767 (Tenn. Ct. App. 2002). The first essential element required to establish standing is that Plaintiffs must show a distinct and palpable injury, with conjectural or hypothetical injuries being insufficient. *Darnell*, 195 S.W. 3d at 620.

Standing also may not be predicated upon an injury to an interest that the plaintiff shares in common with all other citizens. *Mayhew*, 46 S.W.3d at 767. Were such injuries sufficient to confer standing, the State would be required to defend against “a profusion of lawsuits” from taxpayers, and a purpose of the standing doctrine would be frustrated.

Id. The Tennessee Supreme Court approved the holdings in *Mayhew v. Wilder*, 46 S.W. 3d 760, 767 (Tenn.Ct.App. 2001), stating:

In Tennessee, the standing doctrine requires that the person challenging the constitutionality of a statute “must show that he personally has sustained or is in immediate danger of sustaining, some direct injury ... and not merely that he suffers in some indefinite way in common with people generally.” *Parks v. Alexander*, 608 S.W.2d 881, 885 (Tenn.Ct.App. 1980). . . . The plaintiff must allege that the effect of the statute will impose burdens on him “not common to the body of the citizens.” *Patten v. Chattanooga*, 108 Tenn. 197, 65 S.W. 414 (1901); *Bennett v. Stutts*, 521 S.W.2d 575 (Tenn. 1975); *Sachs v. Shelby County Election Commission*, 525 S.W.2d 672 (Tenn. 1975).

The second essential element is a causal connection between the alleged injury and the challenged conduct. *Darnell*, 195 S.W. 3d at 620. The third essential element is a showing that the “alleged injury is capable of being redressed by a favorable decision of the court.” *Id.*

Plaintiffs have not established the essential elements of standing. As set forth herein, when applying a proper interpretation and construction of the challenged statute and Rule, Plaintiffs are not within the scope of these laws and accordingly lack standing as well as injury in the form of immediate and irreparable harm.

5. Plaintiffs Have Failed to Demonstrate That Under a Proper Construction of the Statute and Rule That There Exists Any “Real” and “Substantial” Overbreadth in Relation to the Laws’ “Plainly Legitimate Sweep”

Chapter 377 and the Rule do not affect Plaintiffs’ speech. Moreover they are not facially overbroad as alleged by Plaintiffs through their erroneous interpretation of these laws. Normally, a facial challenge to a legislative act is the most difficult challenge to successfully mount because the plaintiff must establish that no set of circumstances exists under which the act would be valid. *United States v. Salerno*, 481 U.S. 739, 745 (1987). However, under the overbreadth doctrine, when a regulation of conduct plus speech is at issue, the overbreadth must be “real” and “substantial” in relation to the statute’s “plainly legitimate sweep” before the law should be invalidated on its face, and if an ambiguous term has created a constitutional problem which may be solved by construction, courts have a duty to do so. *New York v. Ferber*, 458 U.S. 747, 770 (1982). The United States Supreme Court has reiterated that the overbreadth doctrine is “strong medicine” and has employed it with hesitation and only as a last resort. *Id.* at 769; *see Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973). Consequently, because overbreadth in the First Amendment area may prohibit a state from enforcing a statute against conduct that is

unquestionably within its power to proscribe, the United States Supreme is Court has insisted that the overbreadth involved must be “substantial” and “real” before the statute involved may be invalidated on its face. *Ferber*, 458 U.S. at 769-770.³ Tennessee’s Act “is not invalid simply because some impermissible applications are conceivable.” *Id.* at 772.

Accordingly, if the statute is facially constitutional or “readily susceptible” to a narrowing construction that would make it constitutional, it will be upheld. *Virginia v. American Booksellers Assn.*, 484 U.S. 383, 397 (1988). The application of the narrowing construction applied by the Department to the challenged laws is consistent with Tennessee statutory construction principles.

In construing statutes, it is our duty to adopt a construction which will sustain a statute and avoid constitutional conflict if any reasonable construction exists that satisfies the requirements of the Constitution. . . . When faced with a choice between constructions, one of which will sustain the validity of the statute and avoid a conflict with the Constitution and another which renders the statute unconstitutional, we must choose the former.

Davis-Kidd Booksellers, Inc. v. McWherter, 866 S.W.2d 520, 529-30 (Tenn. 1993).

Consistent with appropriate precedent, this Court should reject Plaintiffs’ improper overly expansive reading of the laws and should adopt the narrowing and proper construction utilized by the Department. “Administrative interpretation and implementation of a regulation are, of course, highly relevant to our analysis, for ‘[i]n evaluating a facial challenge to a state

³[T]here comes a point at which the chilling effect of an overbroad law, significant though it may be, cannot justify prohibiting all enforcement of that law – particularly a law that reflects “legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct.” *Broadrick*, 413 U.S. at 615. For there are substantial social costs created by the overbreadth doctrine when it blocks application of the law to constitutionally unprotected speech, or especially to constitutionally unprotected conduct. To insure that these costs do not swallow the social benefits of declaring a law overbroad, [the Court has] insisted that a law’s application to protect its speech be “substantial,” not only in an absolute sense, but also relative to the scope of the law’s plainly legitimate applications . . . before applying the strong medicine of overbreath invalidation.” *Id.* at 613.

Virginia v. Hicks, 539 U.S. 113, 119-20 (2003).

law, a federal court must . . . consider any limiting construction that a state court or enforcement agency has proffered.’” *Ward v. Rock Against Racism*, 491 U.S. 781, 795-96 (1989) (quoting *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494, n. 5 (1982)). See FAQs 1 and 2 of the Department, released September 20, 2013 and as subsequently revised, copies attached, in the News and Information section of the Insurance Division website of the Department at <http://www.state.tn.us/insurance/index.shtml>

6. The Commissioner Lawfully Promulgated Emergency Rules

The Commissioner has acted as quickly as she was able, under PC 377 effective on July 1, 2013 without a grant of earlier rulemaking powers, to consider the implications of the final federal regulation of navigators published July 17, 2013 amending 45 CFR Part 155, to promulgate these Rules. Indeed even after the federal government promulgated these final rules questions persisted on how the navigator system would work and be implemented. (See <http://marketplace.cms.gov/help-us/common-qandas-about-cac-designation.pdf>)

Given non-emergency rules must be filed 90 days before they become effective, and be promulgated after months of preliminaries of notice, rulemaking hearing, comments, and drafting, (per Tenn. Code Ann. §4-5-203 and -207), it was not possible to use rulemaking hearing process in order to achieve the law’s evident purposes to regulate the navigators who would start to be active on October 1, 2013. This fulfills the requirement of Tenn. Code Ann. § 4-5-208(a) for circumstances justifying emergency rulemaking just from a public necessity point of view, not to mention the immediate danger to the public outlined by the Commissioner. The Emergency Rules are not permanent and must be followed by permanent rulemaking methods in short order to prevent a lapse. The Department has access to the emergency rulemaking provisions even for health insurance rules because they are implemented pursuant to the Uniform

Administrative Procedures Act by virtue of Tenn. Code Ann. § 56-1-702. Moreover, the specific law, PC 377, explicitly grants rulemaking powers for the purpose of the Navigator rules, including the authority to use emergency rulemaking powers to be effective for the PPACA exchange launch date.

7. PC 377 Has no Infirmary Under Article II, Section 17 of the Tennessee Constitution based on its Caption

PC 377 was designed to accommodate the federal exchange marketplace, and to assist the federal government in the regulation of those persons approved by the federal government to offer assistance to persons seeking insurance on the Tennessee exchange. The allowance of such state regulation is permitted by PPACA and has even been publicly encouraged as necessary by federal officials. Public Chapter 377 amended Tennessee Code Annotated, Title 56, Chapter 6, relative to the regulation of navigators in the implementation of the Patient Protection and Affordable Care Act regarding health insurance exchanges. Chapter 377 was passed April 16, 2013 by the Tennessee General Assembly by nearly unanimous approval. The bill's effective date is July 1, 2013. (Senate Ayes 28, Nays 1, PNV 2; House Ayes 87, Nays 0). The use of the term navigator cannot be restricted, as Plaintiffs allege, to confine it to just the subset of assistance personnel described under the federal term "navigator".

The bill's use of the term navigator in the caption is sufficiently informative as the act clearly envisions the need to act and react to what was coming with federal health reform in the exchange. The bill itself declares that it is in the best interest of the people that navigators be licensed and regulated insofar as is consistent with PPACA. The bill by its terms plainly evidences the intent to be construed consistently with the federal Patient Protection and Affordable Care Act, and to empower the commissioner to promulgate rules as may be necessary

or appropriate to regulate the activities of navigators as may be consistent with PPACA. Tenn. Code Ann. § 56-6-1204. A severability statute was included at Tenn. Code Ann. § 56-6-1605.

The Commissioner's emergency rules are consistent with PPACA, and include a registration system to monitor navigators as defined in the state navigator definition. That definition includes all the persons contemplated by the federal system for assistance personnel involved in the insurance marketplace, that is federally facilitated in Tennessee.

Article II, Section 17, of the Tennessee Constitution provides:

No bill shall become a law, which embraces more than one subject; that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption or otherwise, the title or the substance of the law repealed, revived or amended.

“When tested by constitutional provisions such as Section 17 of Article II of our constitution, just as when tested by other constitutional provisions, every doubt is to be resolved in favor of the validity of an act of the legislature.” *Troutman v. Crippen*, 212 S.W.2d 33, 36 (Tenn. 1937) (citation omitted).

So long as the subject matter of the act is germane to that expressed in the title, it is free from the objection that the body of the act is broader than its caption. *Chattanooga-Hamilton County Hosp. Auth. v. City of Chattanooga*, 580 S.W.2d 322 (Tenn 1979). If the body of an act does not contain some hidden incongruity not germane to the purpose stated in the caption, this constitutional provision is not violated. *Hicks v. Rhea County*, 189 Tenn. 383 (1949). The general purpose of this provision of the Constitution is “to give notice of the nature of the proposed legislation and prevent surprise and fraud in the enactment of laws.” *Patterson v. Town of Tracy City*, 191 S.W.2d 432, 434 (Tenn. 1946) (citing *Memphis Street Railway Co. v. Byrne*, 119 Tenn. 278, 104 S.W. 460 (1907)). The constitutional language was “to prohibit so-called ‘omnibus bills’ and bills containing hidden provisions which legislators and other

interested persons might not have appropriate or fair notice.” *Tennessee Mun. League v. Thompson*, 958 S.W.2d 333, 336 (Tenn. 1997) (quoting *State ex rel. Blanton v. Durham*, 526 S.W.2d 109, 111 (Tenn.1975)).

To meet this constitutional requirement it is not necessary for a title to index the details of the act or give a synopsis of it. It is sufficient to direct the mind to the object of the proposed legislation; the general purpose being accomplished, if the caption states the object of the legislation so that the legislative intent may be gathered from the words used.

Hunter v. Conner, 152 Tenn. 258, 269, 277 S.W.71, 74 (1925)(citations omitted).

Article II, Section 17 of the Tennessee Constitution is satisfied when the constituent means embraced in the body of the act have a proper relation to the subject expressed in the caption or tend to accomplish the purpose indicated by the caption. Whatever means or instrumentalities are necessary or usual and proper for effectuating the purpose of an act may be provided therein.

Woods v. Phillips, 558 S.W.2d 825, 830 (1977).

The caption for PC 377, which had been SB 1145, gave sufficient notice of what was the purpose of the act, and what could happen with the act, to allow for the ultimate multipart definition contained for “navigator” under State law. This is hardly incongruous with a still-being-formulated federal rule, 45 CFR Part 155, that was under construction from early 2013 until July 17, 2013, and is still being administratively interpreted from day to day. The non-statutory CACs and other assistance personnel besides the defined “navigators” of PPACA arise from the federal rule, and were not created in the PPACA statute at 42 USC §18031.

Plaintiffs have failed to even allege, much less to demonstrate, any distinct and concrete injury in fact to them as a result of the alleged inadequate caption of PC 377. Additionally, Plaintiffs have failed to establish that any claimed injuries to them are causally connected to the alleged deficiencies in the caption of PC 377. Plaintiffs have not alleged that had there been a different caption to PC 377 that Plaintiffs would have taken any different actions. Indeed,


Plaintiffs cannot demonstrate any distinct and concrete injury in fact resulting from the caption of PC 377 as it clearly gives notice of its substance. Like the Plaintiffs in *Darnell*, 195 S.W.3d at 620-27, Plaintiffs in the instant case lack standing to bring this action based upon challenges to the caption.

CONCLUSION

There being no immediate and irreparable harms or violation of any rights belonging to these Plaintiffs, and there being no substantial likelihood of success on the merits of preemption of the Rules or voiding of either the Rules or PC377, the restraining order should be denied. Furthermore, the State should be allowed the opportunity for a thorough response to any Memorandum of Law in support of the requested Temporary Injunction before any such injunction should issue, especially given the State submits the Plaintiffs' request for injunctive relief lacks merit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing Response and supporting materials, together with a diskette of the video/record being filed, was served by U.S. Mail, postage prepaid, or by hand-delivery, on this the 30th day of September, 2013, upon the following:

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TAB A

Appendix regarding Gary Cohen September 19, 2013 House E&C Testimony:

<http://energycommerce.house.gov/hearing/two-weeks-until-enrollment-questions-ccio>

At 53:20 of video to about 53:30: (Approximate informal transcription)

Mr. Olson: Are they required to undergo background check? Like, I'm sure you did to have your job, like I did in the Navy, are Navigators required to undergo a background check?

Gary Cohen (GC): So, the organizations obviously went through a very rigorous scrutiny process in order to receive the grants. **We have not required, the federal government has not required that back ground checks for the individuals be given, but some states have adopted that requirement as they are permitted to do.**

Mr. Olson: And so, the people on the street are required to get background check, you're telling me that -- the entities we're employing tomorrow but the people actually knocking on doors -- not knocking on doors -- but giving the information out are not required to get a background check?

GC: Like the SHIP program, there is no federal requirement for there to be a background check. SHIP people have been helping people with Medicare for many, many years -- no background check requirement by the federal government. States, like the SHIP program, are able to impose that requirement if they feel think that's something that is important in their communities.

Mr. Olson: What about a drug test? You can't get a job out in the Texas oil fields without a drug test. How about a Navigator?

GC: There is no requirement that an individual Navigator be subject to a drug test, no.

CONTINUED

1:18:40 – 1:20:50

Rep. Scalise: "If somebody just got released from prison for a conviction on identity theft, would that person be eligible to be a navigator? Yes or no, you are under oath.

GC: I am confident that the organizations that we have given grants to . . .

Rep. Scalise: Can they be eligible? Are they eligible? It's a yes or no question. If you hope they are not eligible, then why didn't you make that a rule? ... Am I incorrect in saying that a person who was just released from prison on identity theft can be a Navigator under your rules? Is that an inaccurate statement, 'cause I'm making that statement right now. Your rules allow someone who committed identity theft to be eligible to be a Navigator. If I'm saying anything incorrect, you just correct me right now.

GC: We have had experience for many, many years with the SHIP program. There is no federal requirement for background checks in the SHIP program. I am not aware . . .

Rep. Scalise: Then, my statement's correct. If you correct me, then I'll stop saying it. I just made a statement: If I said anything inaccurate, please correct me, but if you don't, I'll keep making that statement.

GC: There is no federal requirement for background checks or criminal record checks in the Navigator program. Some states . . .

(talking over each other)

Rep. Scalise: Okay, so I'm correct there. Was there a concern . . .

GC: Excuse me.

Rep. Scalise: No, that's my time. He didn't answer my question.

Moderator: I'm saying, the gentleman ought to be given courtesy to answer the question.

Rep. Scalise: And, he will be given the courtesy. I'll ask one last follow-up question and then I'll let you have the time.

GC: Sir, I ask for your support here in being able to answer these questions.

Moderator: One more question and then we're going to give you the time.

1:20:12 Rep. Scalise: Were you concerned that invoking the requirement of criminal background checks might limit the number of people who would apply to be Navigators?

Moderator: Mr. Cohen, you may answer the question.

1:20:20 GC: **We want to get as many – we had a number of factors. It was not clear to us that we have the authority to require the criminal background checks and we wanted to make – we left it up to the states to determine whether that was a requirement that they wanted to impose.**

Rep. Scalise: So, that was a yes or no question I asked. I would just ask if you can give a yes or no answer to a yes or no question. Were you concerned that invoking criminal background checks might limit the number of people who would apply to be Navigators?

GC: The cost and the difficulty of doing criminal background checks, yes. We were concerned about that.

1:20:50 Moderator: Mr. Cohen would you be able to provide [the names of states that have required background checks to the committee...Cohen agrees.]

TAB B

Here is some guidance on the HRSA grant awardees becoming CACs from: http://bphc.hrsa.gov/outreachandenrollment/oetraining8_13.pptx. The following information is notable:

From slide 12:

Health center outreach and enrollment (O/E) assistance workers are any health center staff, contractors or volunteer personnel who will educate consumers and help them complete applications for coverage.

All health center O/E assistance workers (both newly hired and existing health center staff), must complete all required federal and/or state requirements for certified application counselors (CACs).

CAC requirements apply to both Health Center Program grantees supported by the O/E supplement and health centers that choose to conduct outreach and enrollment activities, e.g., look-alikes.

From slide 13:

Health center O/E assistance workers in organizations with O/E supplemental funding must comply with federal and/or state CAC requirements and HRSA requirements.

Example: Non-health center CACs are generally not required to do outreach, but health center O/E assistance workers who become CACs in organizations with O/E supplemental funding are required to do both in-reach with current patients and outreach in their approved service area.

From Slide 16:

Health centers in federally-facilitated Marketplaces (FFMs) and state partnership Marketplaces (SPMs) must apply for and be designated as a CAC organization; and

Ensure that all health center O/E assistance workers successfully complete the federal CAC training and any additional state requirements for CACs.

If you have not done so already, it is important to apply for designation as a CAC organization as soon as possible.

See slides 17 for a FFM compliance flow chart.

TAB C

Appendix in Relation to HHS Guidance on Church Activities

from the HHS partnership center newsletter page:

<http://www.hhs.gov/partnerships/resources/newsletter/081413.html>.

Here are seven steps faith and community leaders like you can take to help connect members of your congregations and communities to the care they need:

- Tell young adults in your communities and congregations about www.healthcare.gov and how they can get health coverage to fit their needs and budget.
- Write an article, blog or op-ed in your congregation's newsletter and/or for posting on a website.
- Have congregational and community leaders and members participate in educational webinars, and then educate others. The HHS Partnership Center webinars can be found here: http://www.hhs.gov/partnerships/aca_act_and_community/index.html. Training materials can be found on <http://marketplace.cms.gov>.
- Sign up to receive updates on the Health Insurance Marketplace at www.HealthCare.gov, www.CuidadoDeSalud.gov and <http://marketplace.cms.gov>.
- Host an Enrollment Sunday in October or November, engaging a Navigator or Certified Assistance Counselor (CAC) in your community to help sign up those who do not have health insurance.
- Include a website badge on how to access health insurance on your organization's website. Badges can be found here: <http://marketplace.cms.gov/getofficialresources/widgets-and-badges/mp-badges-english.html>. Each badge links to www.healthcare.gov.
- Re-post information from the www.HealthCare.gov Facebook page to your organization's Facebook page. Go to www.HealthCare.gov or www.CuidadoDeSalud.gov for more information.

Faith-Based and Community Organizations Assist With Health Insurance Enrollment as Certified Application Counselor Organizations

Faith-based and community organizations can help millions of Americans get enrolled in health insurance starting on October 1. If your organization is interested in training your staff and volunteers to assist people in applying for health insurance coverage through the Federally-facilitated Marketplace (including a State Partnership Marketplace), you can apply to be a Certified Application Counselor (CAC) organization. CAC organizations provide services for free, there is no federal funding for CACs. To learn what kind of Marketplace is operating in your state, click here: <https://www.healthcare.gov/what-is-the-marketplace-in-my-state/>. For more information on the CAC program, go here: <http://marketplace.cms.gov/help-us/partner-with-us.html>.

Applications are now available for interested organizations to complete at <http://marketplace.cms.gov/help-us/cac.html>.

Libraries Providing Information about the Health Insurance Marketplace

The Centers for Medicare & Medicaid Services (CMS) and The Institute of Museum and Library Services (IMLS) has announced an initiative to get librarians ready to help people in every State learn about the new Health Insurance Marketplace.

This initiative will provide public libraries with information about the health care law and connect librarians with Navigators and Certified Application Counselors to help their patrons understand the options for enrollment in the health insurance through the Marketplace.

“Libraries across this country are a tremendous resource for people in their communities,” said CMS Administrator Marilyn Tavenner. “People will likely turn to libraries to learn about the Marketplace, and we want to make sure that library staff has access to the tools and the information to respond to people who want to sign up and enroll for coverage on October 1.”

“I am pleased that CMS is reaching out to the library community so that librarians are prepared to respond to questions about the Marketplace,” said Susan H. Hildreth, IMLS, director, Institute of Museum and Library Services. “Public libraries are trusted sources for health information. We know that for millions of Americans, the nation’s 17,000 public libraries are the ‘go to’ place for information about health issues.” The IMLS is primary source of federal support for the nation’s 123,000 libraries and 17,500 museums.

TAB D

APPENDIX ITEM: Federal Rules Create Assistants Not Found in Federal Statute

PPACA §§ 1311(i) and 3510 are the only places in the ACA that address navigators. The ACA does not contain any statutory language relating to navigators, non-navigator assistants, in person assistors, application counselors or certified application counselors. Here are two PPACA statutes that address navigators.

PPACA § 1311(i):

(i) NAVIGATORS.—

(1) **IN GENERAL.**—An Exchange shall establish a program under which it awards grants to entities described in paragraph (2) to carry out the duties described in paragraph (3).

(2) ELIGIBILITY.—

(A) **IN GENERAL.**—To be eligible to receive a grant under paragraph (1), an entity shall demonstrate to the Exchange involved that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be qualified to enroll in a qualified health plan.

(B) **TYPES.**—[As amended by section 10104(h)] Entities described in subparagraph (A) may include trade, industry, and professional associations, commercial fishing industry organizations, ranching and farming organizations, community and consumer-focused nonprofit groups, chambers of commerce, unions, resource partners of the Small Business Administration, other licensed insurance agents and brokers, and other entities that—

- (i) are capable of carrying out the duties described in paragraph (3);
- (ii) meet the standards described in paragraph (4); and
- (iii) provide information consistent with the standards developed under paragraph (5).

(3) **DUTIES.**—An entity that serves as a navigator under a grant under this subsection shall—

(A) conduct public education activities to raise awareness of the availability of qualified health plans;

(B) distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402;

(C) facilitate enrollment in qualified health plans;

(D) provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and

(E) provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange or Exchanges.

(4) STANDARDS.—

(A) IN GENERAL.—The Secretary shall establish standards for navigators under this subsection, including provisions to ensure that any private or public entity that is selected as a navigator is qualified, and licensed if appropriate, to engage in the navigator activities described in this subsection and to avoid conflicts of interest. Under such standards, a navigator shall not—

- (i) be a health insurance issuer; or
- (ii) receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or employees of a qualified employer in a qualified health plan.

(5) FAIR AND IMPARTIAL INFORMATION AND SERVICES.—The Secretary, in collaboration with States, shall develop standards to ensure that information made available by navigators is fair, accurate, and impartial.

(6) FUNDING.—Grants under this subsection shall be made from the operational funds of the Exchange and not Federal funds received by the State to establish the Exchange.

PPACA § 3510

Section 340A of the Public Health Service Act (42 U.S.C. 256a)
is amended—

(1) by striking subsection (d)(3) and inserting the following: “(3) LIMITATIONS ON GRANT PERIOD.—In carrying out this section, the Secretary shall ensure that the total period of a grant does not exceed 4 years.”;

(2) in subsection (e), by adding at the end the following: “(3) MINIMUM CORE PROFICIENCIES.—The Secretary shall not award a grant to an entity under this section unless such entity provides assurances that patient navigators recruited, assigned, trained, or employed using grant funds meet minimum core proficiencies, as defined by the entity that submits the application, that are tailored for the main focus or intervention of the navigator involved.”; and

(3) in subsection (m)— (A) in paragraph (1), by striking “and \$3,500,000 for fiscal year 2010.” and inserting “\$3,500,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2015.”; and (B) in paragraph (2), by striking “2010” and inserting “2015”.

TAB E

<http://www.cms.gov/CCIIO/Resources/Files/Downloads/marketplace-ways-to-help.pdf> (accessed 9/28/2013)

Link states that:

... No matter what state they live in, consumers will be able to get live in-person help as they go through the process of applying for and choosing new coverage options in the Marketplace.

Individuals can help provide that assistance in a variety of roles. They can become Navigators, non-Navigator assistance personnel, or certified application counselors. In addition, agents and brokers can also help consumers enroll in new coverage options. Below is a description of the activities, required training, and funding for each type of consumer assistance.

What are the different consumer assistance roles?

Navigators: Navigators will have a vital role in helping consumers prepare electronic and paper applications to establish eligibility and enroll in coverage through the Marketplace. This includes steps to help consumers find out if they qualify for insurance affordability programs (including a premium tax credit, cost sharing reductions, Medicaid and the Children's Health Insurance Program), and if they're eligible, to get enrolled. Navigators will also provide outreach and education to consumers to raise awareness about the Marketplace, and will refer consumers to ombudsmen and other consumer assistance programs when necessary. Navigators can play a role in all types of marketplaces. They'll be funded through state and federal grant programs, and must complete comprehensive training.

Non-Navigator assistance personnel: Non-Navigator assistance personnel (also known as in-person assistance personnel) will perform generally the same functions as Navigators but will exist in either a State-based Marketplace or a State Partnership Marketplace. Non-Navigator assistance personnel will serve as a part of an optional program that the state can set up before its Marketplace is economically self-sustaining, and before its Navigator program is fully functional. Though they perform the same functions as Navigators, non-Navigator assistance personnel will be funded through separate grants or contracts administered by a state. They must also complete comprehensive training.

Certified application counselors: The Federally-facilitated Marketplace will designate organizations to certify application counselors who perform many of the same functions as Navigators and non-Navigator assistance personnel—including educating consumers and helping them complete an application for coverage. An online application will be available at the end of July 2013 for organizations who want to become Marketplace-designated organizations that can certify application counselors. These groups might include community health centers or other health care providers, hospitals, or social service agencies. To be notified when the online application is available, visit Marketplace.cms.gov and sign up for email notifications and updates. If you have questions about other ways to partner with the Marketplace, contact partnership@cms.hhs.gov.

A State-based Marketplace may choose to certify application counselors directly rather than designate organizations to do so. Certified application counselors and Marketplace-designated organizations won't receive new federal grant money through the Marketplace. The counselors and organizations could, however, receive federal funding through other grant programs or Medicaid to help support their consumer assistance and enrollment activities. Examples of possible certified application counselors include staff at community health centers, hospitals, other health care providers, or social service agencies. In states that already have their own certification programs, staff at consumer non-profit organizations may also be certified as application counselors by Marketplace-designated organizations. All certified application counselors are required to complete comprehensive training.

Agents and Brokers: To the extent permitted by a state and if all Marketplace requirements are met, licensed health insurance agents and brokers may enroll individuals, small employers, and employees in coverage through the Marketplace. Agents and brokers will be compensated by the issuer or by the consumer to the extent permitted under state law. Federal and state training and certification requirements will apply to agents and brokers who enroll or assist consumers in the Marketplace.

Attachment to Response in Opposition to Restraining Order

TAB F



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
Nashville, Tennessee

Navigator and Certified Application Counselor Registration Requirements

Frequently Asked Questions (FAQs #1)
Release Date: September 20, 2013

Q1: May a non-navigator, non-certified application counselor offer educational information related to the Affordable Care Act and the federally facilitated marketplace?

A1: Yes. Organizations and individuals, including academic or religious institutions, libraries, and other community volunteer organizations, among others, may continue to provide community education about the Affordable Care Act and the federally facilitated marketplace, including general information about benefits, income-based tax credits, and Internet and toll-free phone options available for enrollment available on government and other public websites. However, education or community outreach that involves specifically assisting a consumer complete an application for health coverage or that otherwise walks that consumer through the federally facilitated marketplace application process, or discusses the benefits, terms, and features of the qualified health plans offered through the federally facilitated marketplace, would be considered acting as an application counselor, and that individual would be required to go through the federal certification program and register with the Tennessee Department of Commerce and Insurance.

For example, if an organization conducts a presentation in which a room full of people is shown the federally facilitated marketplace website and the presenter walks the class through a dummy application process, so long as the people in the room do not have an opportunity to sign up during the presentation, this educational presentation would not be considered acting as a navigator or application counselor under our rule and would not require registration. However, if the people in that room are sitting in front of computers and are filling out their own federally facilitated marketplace applications during the presentation, then this would be considered facilitating enrollment in the marketplace and the presenter would have to be certified as an application counselor or a navigator by the federal government and be registered with the Tennessee Department of Commerce and Insurance.



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
Nashville, Tennessee

Navigator and Certified Application Counselor Registration Requirements

Frequently Asked Questions (FAQs #2)

Release Date: September 20, 2013

Q1: Where can an individual applicant for a navigator or certified application counselor registration find an application form?

A1: Applications for individual navigators and certified application counselors, as well as for navigator and certified application counselor entities are available under the News and Information tab of the Department of Commerce and Insurance website at <http://www.tn.gov/insurance/index.shtml>. Applications are also available on the Agent Resources page at <http://www.tn.gov/insurance/agentsRes.shtml>.

Q2: When can an applicant for a navigator or certified application counselor registration begin to offer navigator or certified application counselor assistance related to the federally facilitated marketplace?

A2: Completed applications must be e-mailed to ce.agent.licensing@tn.gov. An applicant for a navigator or certified application counselor registration will receive notification of receipt by the Tennessee Department of Commerce and Insurance and may offer navigator or certified application counselor assistance at that time.

Update: At the direction of the U.S. Department of Health and Human Services, individuals or entities seeking to operate as navigators or certified application counselors may not begin offering such services unless and until they are certified by the federal government. The Tennessee Department of Commerce and Insurance may not register a navigator or certified application counselor that has not been certified by the federal government. The Department of Commerce and Insurance, therefore, advises potential applicants that their applications should not be submitted to the Department until the applicant has received a federal certification number that the applicant should include on the application to the State. Further, The Department of Commerce and Insurance has received certified application counselor applications from individuals whose reported affiliated certified application counselor organizations have not submitted registration materials. The Department's Emergency Rules define certified application counselors as "any employee or volunteer of a certified application counselor organization..." The Department will not

certify application counselor individuals not connected to a certified application counselor organization.

A2 (above) is modified accordingly as follows:

Completed applications must be e-mailed to ce.agent.licensing@tn.gov. An applicant for a navigator or certified application counselor registration will receive notification of receipt by the Tennessee Department of Commerce and Insurance ~~and may offer navigator or certified application counselor assistance at that time.~~ An applicant may offer navigator or certified application counselor assistance after receiving notification that a completed application that includes a federal certification number has been received by the Department. For purposes of this FAQ, the Department will not consider applications complete if a certified application counselor applicant has submitted an application that lists as an affiliated certified application counselor organization an organization that has not submitted an application to the Department. The Department advises organizations that they should coordinate the submission of their organization's application with the submission of applications by certified application counselors affiliated with the organization.

Q3: How does a navigator or certified application counselor meet the fingerprinting and background check requirements under the Emergency Rules?

A3: The Department of Commerce and Insurance will conduct a Tennessee criminal history background check of a navigator or certified application counselor applicant upon receipt of his/her application. The Department of Commerce and Insurance will contact navigators and certified application counselors regarding fingerprinting procedures for national criminal history background reviews.

A navigator or certified application counselor may continue to offer assistance unless otherwise directed by the Department of Commerce and Insurance.

A3 (above) is modified accordingly as follows per the direction provided by the U.S. Department of Health and Human Services.

The Department of Commerce and Insurance will conduct a Tennessee criminal history background check of a navigator or certified application counselor applicant upon receipt of his/her **completed** application. The Department of Commerce and Insurance will contact navigators and certified application counselors regarding fingerprinting procedures for national criminal history background reviews.

A navigator or certified application counselor may continue to offer **facilitated enrollment** assistance unless otherwise directed by the Department of Commerce and Insurance **after receiving notification that a completed application that includes a federal certification number has been received by the Department.**

Attachment to Response in Opposition to Restraining Order

TAB G

Assistance Roles to Help Consumers Apply & Enroll in Health Coverage Through the Marketplace

Starting October 1, 2013, consumers in all states will be able to apply for new affordable health coverage options through the Health Insurance Marketplace for coverage beginning as soon as January 1, 2014. Some states are setting up a State-based Marketplace, other states will work with the federal government in a State Partnership Marketplace, and the remaining states will have a Federally-facilitated Marketplace. No matter what state they live in, consumers will be able to get live in-person help as they go through the process of applying for and choosing new coverage options in the Marketplace.

Individuals can help provide that assistance in a variety of roles. They can become Navigators, non-Navigator assistance personnel, or certified application counselors. In addition, agents and brokers can also help consumers enroll in new coverage options. Below is a description of the activities, required training, and funding for each type of consumer assistance.

What are the different consumer assistance roles?

Navigators: Navigators will have a vital role in helping consumers prepare electronic and paper applications to establish eligibility and enroll in coverage through the Marketplace. This includes steps to help consumers find out if they qualify for insurance affordability programs (including a premium tax credit, cost sharing reductions, Medicaid and the Children's Health Insurance Program), and if they're eligible, to get enrolled. Navigators will also provide outreach and education to consumers to raise awareness about the Marketplace, and will refer consumers to ombudsmen and other consumer assistance programs when necessary. Navigators can play a role in all types of marketplaces. They'll be funded through state and federal grant programs, and must complete comprehensive training.

Non-Navigator assistance personnel: Non-Navigator assistance personnel (also known as in-person assistance personnel) will perform generally the same functions as Navigators but will exist in either a State-based Marketplace or a State Partnership Marketplace. Non-Navigator assistance personnel will serve as a part of an optional program that the state can set up before its Marketplace is economically self-sustaining, and before its Navigator program is fully functional. Though they perform the same functions as Navigators, non-Navigator assistance personnel will be funded through separate grants or contracts administered by a state. They must also complete comprehensive training.

Certified application counselors: The Federally-facilitated Marketplace will designate organizations to certify application counselors who perform many of the same functions as Navigators and non-Navigator assistance personnel—including educating consumers and helping them complete an application for coverage. An online application will be available at the end of July 2013 for organizations who want to become Marketplace-designated organizations that can certify application counselors. These groups might include community health centers or other health care providers, hospitals, or social service agencies. To be notified when the online application is available, visit Marketplace.cms.gov and sign up for email notifications and updates. If you have questions about other ways to partner with the Marketplace, contact partnership@cms.hhs.gov.

A State-based Marketplace may choose to certify application counselors directly rather than designate organizations to do so. Certified application counselors and Marketplace-designated organizations won't receive new federal grant money through the Marketplace. The counselors and organizations could, however, receive federal funding through other grant programs or Medicaid to help support their consumer assistance and enrollment activities. Examples of possible certified application counselors include staff at community health centers, hospitals, other health care providers, or social service agencies. In states that already have their own certification programs, staff at consumer non-profit organizations may also be certified as application counselors by Marketplace-designated organizations. All certified application counselors are required to complete comprehensive training.

Agents and Brokers: To the extent permitted by a state and if all Marketplace requirements are met, licensed health insurance agents and brokers may enroll individuals, small employers, and employees in coverage through the Marketplace. Agents and brokers will be compensated by the issuer or by the consumer to the extent permitted under state law. Federal and state training and certification requirements will apply to agents and brokers who enroll or assist consumers in the Marketplace.

What kind of assistance will be available through the Marketplace?

	Navigators	Non-Navigator assistance personnel	Certified application counselors	Agents and Brokers
State-based Marketplace	Yes	Optional for states	Yes	Optional for states
State Partnership Marketplace	Yes	Yes	Yes	Yes, if a state permits it
Federally-facilitated Marketplace	Yes	Not applicable; Navigators provide this assistance	Yes	Yes, if a state permits it

How are these roles funded?

	Navigators	Non-Navigator assistance personnel	Certified application counselors	Agents and Brokers
State-based Marketplace	State-based grant program	State-based grants or contracts, which can be funded by Exchange Establishment grants	Certified application counselors will not receive new federal grant money through the Marketplace. Federal funding through other grant programs or Medicaid may be available.	Agents and brokers can be compensated by insurance companies or consumers, consistent with state law.
State Partnership Marketplace	Federal grant applications are being reviewed and awards will be announced in late summer 2013	State-based grants or contracts, which can be funded in states with consumer partnerships by Exchange Establishment grants	Some examples of possible application counselors include staff at community health centers, hospitals, other health care providers, or social service agencies.	
Federally-facilitated Marketplace	Federal grant applications are being reviewed and awards will be announced in late summer 2013	Not applicable		

What training and certification is required?

	Navigators	Non-Navigator assistance personnel	Certified application counselors	Agents and Brokers
State-based Marketplace	State training and certification (state may choose to use federal training)	State training and certification (state may choose to use federal training)	State training and certification (state may choose to use federal training)	State training and certification (state may choose to use federal training)
State Partnership Marketplace	Federal training and certification, which may be supplemented by the state	Federal training and certification, which may be supplemented by the state	Federal training and federal designation of organizations, which may be supplemented by the state	Federal training and registration
Federally-facilitated Marketplace	Federal training and certification	Not applicable	Federal training and federal designation of organizations	Federal training and registration



Attachment to Response in Opposition to Restraining Order

TAB H

**COMMON QUESTIONS AND ANSWERS
ON DESIGNATION OF CERTIFIED APPLICATION COUNSELOR (CAC)
ORGANIZATIONS IN FEDERALLY-FACILITATED MARKETPLACES**

1. **The preamble to the final rule and CMS' guidance says that the Federally-facilitated Marketplaces will designate certain types of organizations as CACs. Some types of organizations, by the nature of the organization, will clearly meet the criteria to be a CAC, such as HRSA grantees, FQHCs, and IHS.**

Do those organizations have to file an application in order to be designated as a CAC organization?

ANSWER: Yes. Although we anticipate designating all interested HRSA grantees, FQHCs, IHS, and similar organizations as CAC organizations, they must submit an application for us to designate them.

2. **May an organization be both a Navigator or a Champion for Coverage, and also be a designated CAC organization?**

ANSWER: Yes, an organization may be a Navigator grantee or a Champion for Coverage and also be a designated CAC. However, we do not anticipate that any Navigator grantees will seek to become a designated CAC organization for the same service area as well. Navigator grantees are funded to perform the type of work that designated CAC organizations may perform plus additional types of work, such as outreach and education.

3. **If an organization has multiple locations, facilities and/or organizational members, may the larger (for example, the parent) organization apply to be a designated CAC organization on behalf of all of its facilities, locations, etc.? Or must each location or organizational member or subsidiary submit a separate application?**

ANSWER: In a Federally-facilitated Marketplace, each separate legal component of a larger organization must submit its own application to be a designated CAC organization. However, a single legal entity with multiple locations within a single state may submit the application for all of its locations. If an entity has locations in several different states in which a Federally-facilitated Marketplace will be operating, it must submit a separate application for each state.

An organization submitting an application for multiple locations should keep in mind that the organization that submits the application is responsible for making sure that all of the staff and volunteers it certifies as individual certified application counselors take and pass the training, and comply with the requirements to be a CAC including privacy and security requirements. Also, the organization that submits the application is responsible for making sure that each staff member and volunteer it certifies as a certified application counselor signs an agreement that he/she will comply with the CAC requirements.

Organizations seeking to become CAC organizations in State-based Marketplaces should contact the State-based Marketplace to learn more about the applicable procedures.

4. **The CAC application for Federally-facilitated Marketplaces only allows us to include 5 locations. How do we include more than 5 locations?**

ANSWER: If the organization submitting the CAC application has more than 5 locations, it should submit a separate application per every 5 locations. If the organization has more than 25 locations, please indicate that in one of the boxes indicating location, and if the organization becomes a designated CAC organization, CMS will contact it to obtain the information for the additional locations.

5. **The CAC application for Federally-facilitated Marketplaces asks the organization to list locations following the question “How can the general public contact your organization”. Is the organization supposed to list every location where it has offices?**

ANSWER: The organization should list all locations where it will provide certified application counseling services to consumers. It should not list any offices or facilities where it does not intend to provide certified application counselor services.

6. **If my organization wants to provide CAC services in a state in which there is a Federally-facilitated Marketplace (FFM), I understand that the CAC training will be given on-line by the FFM. If my organization is in a state in which there is a State-based Marketplace (SBM), how do I know what training will be required and how to access that training?**

ANSWER: All SBMs are required to have and train CACs. Each SBM is responsible for deciding what training it will require for CACs in its state and how it will conduct that training. SBMs may choose to use the FFM CAC training, or they may choose to provide their own CAC training. This is true for organization seeking to offer CAC services in a state with a SBM, including organizations that receive federal funding, such as HRSA grantees and FQHCs.

Organizations in states with a SBM should contact the SBM or go to the SBM’s website for information about the CAC program in that state. For links to each SBM’s website, see <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/state-marketplaces.html>.

7. **The preamble to the final rule and the guidance CMS issued indicate that organizations the FFM may designate as CAC organizations include agencies that have experience providing social services to the community, such as SNAP outreach, energy assistance, or tax assistance, that are non-federal governmental organizations or are organized under section 501(c) of the Internal Revenue Code.**

Our organization receives federal funds. Does that disqualify it from being a designated CAC organization?

ANSWER: No. An organization that receives federal funds may apply to become a designated CAC organization as long as its participation in the CAC program would not otherwise be prohibited.

8. Will CACs be funded?

ANSWER: CAC designated organizations and individual CACs will not be funded through the Marketplace. They may seek funding from outside sources, such as other available federal, state, or private funds.

9. Will the CAC training materials be available for people who are not CACs but are community organizations, advocates, partners, etc.?

ANSWER: Yes. Training materials are publicly available at <http://marketplace.cms.gov/training/get-training.html>.

10. Is there more than one training session scheduled, or can training be completed at any time since it is web-based?

ANSWER: Because the CAC training is web-based, it can be completed at any time. Individual CACs must complete the training before being certified by their designated CAC organization.

11. Is one of the roles of a CAC to train others to become a CAC?

ANSWER: No. CMS training is required for all individual CACs in the Federally-facilitated Marketplace (FFM). CACs will access the FFM's online training directly. Every individual who becomes a CAC in an FFM state must complete the on-line training.

12. How many hours will the CAC training be?

ANSWER: Approximately 5 hours.

13. Is there just training or is there a test too?

ANSWER: As part of the training, CACs will have to pass an exam as well.

14. What, if any, cost is there to participate in the training?

ANSWER: There is no fee to take the training.

15. Is there a limit to the numbers of CACs a designated CAC organization may have trained?

ANSWER: No, but because each CAC designated organization must oversee its individual CACs and ensure that they comply with the program's requirements, they should only certify as many individual CACs as they can reasonably oversee.

16. What parts of the Navigator training will not be required for CACs?

ANSWER: There will be separate CAC training that individuals must take in order for their designated CAC organization to certify them as a CAC. The CAC training will be based on the Navigator training, but will not include things that do not pertain to CACs, such as training on outreach (note: CACs may, but are not required to conduct outreach) or federal grant reporting requirements.

17. Will a copy of the Federally-facilitated Marketplace (FFM) CAC training be made available to State-based Marketplaces (SBMs) so they may use it as a model?

ANSWER: Yes. SBMs must have a CAC program and must establish CAC training. SBMs may choose to use the training provided by the FFM, or they may choose to develop their own training. SBMs that choose to develop their own training may wish to base the training on their Navigator training.

18. Can a designated CAC organization certify staff as CACs without having the staff take the CAC certification training?

ANSWER: No, completing the training is a prerequisite for certification for every individual CAC.

19. When an agency becomes a designated CAC organization, does it need to have all of its employees and volunteers take the CAC training or just those it wants to certify to be CACs?

ANSWER: Only those who will be certified to be CACs are required to take and pass the CAC training.

20. Will CACs receive a certificate as proof that they have taken the specific trainings?

ANSWER: Yes, CACs will receive a training certificate at the completion of their training. CACs will also receive a CAC certificate from their designated CAC organization, which will identify them as a CAC and should be displayed any time they assist a consumer.

21. Are there specific criteria that an organization must meet in order to be eligible to be a designated CAC organization? If so, are these criteria outlined in the application?

ANSWER: The criteria to be designated as a CAC organization in FFM are outlined in CMS guidance, which is posted on the internet at:
<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/CAC-guidance-7-12-2013.pdf>. SBMs may use the same criteria as the FFM's or may establish their own criteria.

22. Will there be a published list of organizations that the FFM designates as CAC organizations? If so, what is the best way to find which organizations provide CAC assistance?

ANSWER: Yes. A list of the designated CAC organizations including their locations and contact information will be posted on <http://HealthCare.gov>, with a Find Local Help tool. This will allow consumers to search for assistance personnel in their area, including CACs. CMS anticipates that this will become available beginning late August.

23. In the FFM, will there be a published list of those staff members and volunteers each designated CAC organization certifies as individual CACs?

ANSWER: No. Consumers will need to contact the designated CAC organizations in their geographic area to obtain CAC assistance.

24. Are individuals able to become CACs in the FFM if they are not affiliated with a designated CAC organization?

ANSWER: No. in the FFM, they must be affiliated with a designated CAC organization.

25. Are there a certain number of organizations who will receive CAC designation in the FFM? How many CAC organizations will be designated per state?

ANSWER: There is no limit to the number of organizations that may be designated, either generally or per state.

26. What does it mean to screen staff and volunteers who would become individual CACs? Does this mean conduct an interview, background check, etc.?

ANSWER: Screening could involve background checks, calling past employers for references, checking government-issued identification, or other tools that will tell the organization whether the organization can trust its staff and volunteers to handle any private consumer information responsibly and securely, to adhere to all CAC program requirements and standards, and to act in the best interest of the consumers they assist.

27. What are the benefits to becoming a designated CAC organization?

ANSWER: CAC designated organizations will benefit by receiving the Marketplace's training and being able to represent themselves to consumers as being certified by their state's Marketplace to provide application and enrollment assistance.

28. How does an organization apply to be a designated CAC organization for the FFM?

ANSWER: Complete the online application available at <http://marketplace.cms.gov/help-us/cac-apply.html>.

29. When are the applications to be a designated CAC organization due?

ANSWER: There is no deadline. CAC applications will be accepted and reviewed on a rolling basis.

30. What if an individual lives in a state where the news media is reporting the state will not participate in the Marketplace. How can residents in such a state get assistance?

ANSWER: The FFM will be operating in all states that do not operate a State-based Marketplace. Organizations in those states that are interested in becoming a designated CAC organization should apply using the online application available at <http://marketplace.cms.gov/help-us/cac-apply.html>. Consumers in those states will be able to find designated organizations from which to obtain assistance through <http://Healthcare.gov>.

31. How does an organization apply for CAC designation in a State Partnership Marketplace (SPM)?

ANSWER: Organizations in State Partnership Marketplaces should apply the same way as organizations would apply in FFMs, through the on-line application available at <http://marketplace.cms.gov/help-us/cac-apply.html>.

32. Does an organization that only wants to have one or two of its staff become CACs have to become a designated CAC organization to do so?

ANSWER: Yes. An organization must be a designated CAC organization to certify any of its staff as CACs in the FFM. An organization seeking to become CAC organizations in State-based Marketplaces should contact the State-based Marketplace to learn more about the applicable procedures in the state.

33. If an organization is designated by Medicaid agencies as an application assistance site in some states, but not others, how should the organization answer that question on the application in the state where they are not designated – yes or no?

ANSWER: A separate CAC application must be submitted for each state. The questions on each application should be answered to reflect the organization's designation in that state.

34. May an organization apply only to have a staff member become an individual CAC, without becoming a designated CAC organization?

ANSWER: No. An organization must apply and become a designated CAC organization in order to certify one of its staff members or volunteers as an individual CAC.

35. May a designated CAC organization or an individual CAC recommend a specific QHP?

ANSWER: No. A CAC will help the consumer through the process of selecting a plan, and must give the consumer information about the full range of QHP options and insurance affordability programs for which they are eligible. The CAC may not direct the consumer towards a specific plan but may give the consumer information that allows the consumer to make an informed decision as to which plan is in the consumer's best interest.

36. Will the CACs be expected to assist consumers with enrollment in Medicaid/CHIP?

ANSWER: Yes. CACs are required to help consumers apply for and enroll in insurance affordability programs, which include Medicaid, CHIP, advance payment of the premium tax credit and cost-sharing reductions through the Marketplace. All of these programs will be covered in the training.

37. Can a CAC actually help an individual compare health plans, benefits, and carrier networks and assist the individual in choosing a health plan?

ANSWER: Yes, those are required duties of a CAC. But remember that a CAC cannot actually choose a plan or enroll someone in a plan. A CAC may only assist with plan selection and enrollment, and must provide this assistance in the consumer's best interest.

38. HRSA funding for FQHCs requires outreach in the community. That seems to be in conflict with the final CAC rule. Please clarify.

ANSWER: If an FQHC is a HRSA grantee and would like to be a CAC, the FQHC would have to comply with any HRSA requirements in addition to CAC requirements. The CAC rule does not prohibit CACs from conducting outreach to the community, but it does not require CACs to conduct outreach. So an FQHC would be able to meet HRSA's requirement to conduct outreach without conflicting with the CAC requirements.

39. Will there be a support database and/or a dedicated help desk available to CACs to get answers to consumers' questions that come up in the enrollment process?

ANSWER: CACs may call the toll-free Marketplace call center at 1-800-318-2596 to help answer any consumer questions.

40. Will CACs assist employers with the SHOP options? If not, who will do this?

ANSWER: CACs may but are not required to assist employers with SHOP. Agents, brokers, Navigators, and non-Navigator in-person assistance personnel are available to assist employers with the SHOP process. CACs will, however, assist employees with SHOP options.

41. Are there specific requirements for how many consumers each CAC or designated CAC organization must assist?

ANSWER: No. There are no requirements regarding the minimum number of consumers a designated CAC organization or each CAC must assist.

42. Will CACs be required to report their activity to the FFM, like SHIPs do for each person they assist with Medicare?

ANSWER: There are no requirements for reporting to the FFM. However, each designated CAC organization will give each individual CAC it certifies a unique identifying number that the individual CAC should direct the consumer to enter into the appropriate place in each application that he or she assists with. The designated CAC organization may also ask each individual CAC to make reports to them as part of the organization's requirement to track their CAC staff and volunteers.

43. About how long on average will it take a CAC to walk a consumer through enrollment?

ANSWER: It will vary depending on the consumer's needs. We estimate that it will take most assistance personnel about one hour to walk a typical client through the entire process, including creating an account, filling out eligibility information, comparing plans, and completing enrollment.

44. Can a fully volunteer-run organization become a designated CAC organization?

ANSWER: Yes, as long as it meets the criteria for being a designated CAC organization.

45. Can you clarify the difference between CACs and Navigators?

ANSWER: There are a few main differences. Navigators are funded by grants through the Marketplace, while designated CAC organizations and individual CACs are not funded by the Marketplace (although designated CAC organizations may obtain funding from sources other than the Marketplace). The Navigator program has stricter conflict of interest requirements, including some conflicts of interest that prohibit entities and their staffs from becoming Navigators. The CAC program has conflict of interest disclosure requirements, but the conflicts of interest subject to disclosure will not prevent a CAC designated organization staff member or volunteer from becoming a CAC. Navigators are also required to conduct outreach and education, while CACs are not.

46. If an organization has applied to be a Navigator, should it still apply to be a designated CAC organization in case it is not selected as a Navigator grantee?

ANSWER: Organizations that were not awarded a Navigator grant may seek designation as a CAC organization.

47. Are CACs considered non-navigator assistance personnel?

ANSWER: No. When we talk about non-Navigator assistance personnel, we mean an in-person assistance program authorized by federal regulations at 45 CFR 155.205(d) and (e), which is sometimes called the in-person assistance program. The CAC program is a different program under a different regulatory provision (45 CFR 155.225) and has different conflict of interest, training and other requirements from those applicable to the non-Navigator assistance program in the FFMs. When you hear “non-Navigator assistance personnel,” it is not intended to include CACs.

48. How does an agent or broker differ from a CAC?

ANSWER: Unlike agents and brokers, CACs cannot charge consumers for their assistance and are not paid by health insurers to sell insurance. Agents and brokers are licensed by their state to sell insurance. CACs do not sell insurance, nor will they be enrolling individuals in health coverage, including QHPs offered through the Marketplace.

49. Can an insurance agent or broker be a CAC?

ANSWER: The CAC rule does not prohibit an agent or broker from being a CAC. Agents or brokers that become a designated CAC organization or who are certified by a designated CAC organization must comply with all applicable CAC requirements, including those related to disclosure of conflicts of interest, giving consumers information about all the QHPs and insurance affordability programs for which a consumer is eligible, and forging charging fees for the assistance provided. In an SBM state, those interested in being a CAC designated organization or an individual CAC should check with their SBM.

50. Will organizations that already help consumers with health insurance applications or other types of applications, such as Medicaid, CHIP, SSI or SSDI, have to become CAC designated organizations in order to continue doing this type of work?

ANSWER: No. Designation as a CAC organization is not required to continue to assist people. The program is entirely optional. However, an organization that is not designated as a CAC organization will not be able to represent itself as a designated CAC organization to the public and will not be listed on our website.

51. Are CACs only for FFM and State Partnership Marketplaces?

ANSWER: No. Every Marketplace is required to have CACs. However, the application on <http://Marketplace.cms.gov> is only for FFM and SPM states. If you are in an SBM state, check with your state's Marketplace for information on that process. For links to each SBM's website, see <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/state-marketplaces.html>.

52. Will State-based Marketplace CAC programs operate in the same manner as the Federally-facilitated Marketplace CAC program?

ANSWER: All Marketplaces must have a CAC program. SBMs have the option to designate CAC organizations and require that the organization certify its staff and volunteers, as the FFM will do. SBMs also have the option to certify individual CACs directly or to do a combination of the two options.

53. How much flexibility does a state-based Marketplace have regarding CAC requirements and responsibilities? Are there any provisions in the federal guidance that they MUST follow?

ANSWER: State-based Marketplaces must follow all of the requirements of the CAC final rule (45 CFR 155.225), but are not expected to follow CMS's subregulatory guidance for the FFMs and SPMs, although they are welcome to do so.

54. Can an individual enroll in a qualified health plan offered through the Marketplace website without going through a CAC or a Navigator?

ANSWER: Yes. A consumer may apply for a determination of eligibility to enroll in coverage under a qualified health plan offered through the Marketplace without help from any assister. CACs or Navigators are available to help the consumer complete the same application process that the consumer could otherwise complete on his or her own. The benefit to using a CAC or other in-person assister, such as a Navigator, is that the CAC or Navigator will be able to offer expertise on both the enrollment process itself (such as how the consumer creates an account and how to compare plans) and information related to health plans and insurance affordability programs (such as advance premium tax credits, deductibles, co-pays, etc.)

55. What happens to organizations that apply to be, but are not designated as CAC organizations, but still want to help people enroll in the Marketplace?

ANSWER: Organizations may continue to provide any enrollment assistance they already provide, whether or not they are a designated CAC organization. The CAC training materials are publicly available at <http://marketplace.cms.gov/training/get-training.html>. Organizations may also choose to become a Champion for Coverage to help educate people about the Marketplace (go to <http://marketplace.cms.gov> and click on "Partner with Us.") An organization does not need to be a designated CAC organization if it wants to be a Champion for Coverage.

56. What level of health care knowledge should an individual already have to become a CAC?

ANSWER: There is no minimum level of knowledge required for an individual to be certified as a CAC by a designated CAC organization, other than completing the required CAC training. The FFMs' CAC training will teach each individual CAC everything he or she needs to know about the Marketplace, qualified health plans, and insurance affordability programs to help consumers apply for and enroll in coverage.

57. CMS guidance identified certain types of organizations, based on their functions, that the FFM anticipates designating as CAC organizations. Are other organizations that were not identified, but meet the criteria specified in guidance, eligible to become designated CACs?

ANSWER: Yes. Although CMS anticipates designating as CACs certain types of organizations in the FFMs, all organizations that meet the criteria specified in guidance are eligible to become designated CACs.

58. **Would CMS-provided CAC training count as part of the HRSA Outreach and Enrollment Assistance supplemental awards' training that is required?**

ANSWER: Yes, CAC training will count as part of the required HRSA Outreach and Enrollment Assistance training requirements. Please visit HRSA at <http://bphc.hrsa.gov/outreachandenrollment> for further information on the HRSA Outreach and Enrollment Assistance training requirements in the FFM and SPM Marketplaces.

59. **Will the CMS-provided CAC training be available in Spanish?**

ANSWER: Yes, the CAC training will be offered in Spanish.

60. **Are there any guidelines for how much training a state operating a State-based Marketplace may require for CACs?**

ANSWER: A state which operates a State-based Marketplace may set its own guidelines for the amount of training it may require for CACs, as long as they are consistent with the provisions of 45 CFR 155.225.

61. **If an organization in a state in which the FFM or an SPM operates currently assists consumers with Medicaid applications, do they have to take the CAC training?**

ANSWER: The federal regulation establishing the CAC program does not require an organization to be designated as a CAC organization to continue to assist consumers. An organization may continue to assist consumers without being designated as a CAC organization; however in such case they may not refer to themselves as a CAC designated organization. However, all designated CAC organizations in the FFM and SPMs must have their staff and volunteers take the CAC training to be certified as a CAC.

Organizations and individuals that wish to be designated or certified as a CAC organization or counselor in a state which operates a SBM should contact the SBM for information about the CAC program in their respective state. Each SBM is responsible for deciding what training it will require for CACs in its state and how it will conduct that training, as long as the training requirements developed by the SBM are consistent with the provisions of 45 CFR 155.225. This applies even for organizations that receive federal funding.

62. **Are Medicaid eligibility vendors that contract with hospitals eligible to become CACs in the FFMs?**

ANSWER: Yes, as long as the Medicaid eligibility vendor meets the criteria to be a designated CAC organization and agrees that it and the individual staff members and volunteers it certifies will comply with all of the requirements set forth in 45 CFR 155.225, such as providing information about the full range of QHPs and insurance affordability programs for which consumers are eligible, acting in the best interests of the consumers

assisted, and not charging a fee for its CAC assistance. In addition, hospitals and other providers that are designated CAC organizations may certify as individual CACs the staff of vendors they contract with as long as they meet all of the standards and requirements to be an individual CAC. In an SBM state, those interested in being a CAC designated organization or an individual CAC should check with their SBM.

63. Can a pharmacy be a designated CAC organization in FFM and SPMs?

ANSWER: Yes, as long as a pharmacy meets the criteria to be a designated CAC organization and agrees that it and the individual staff members and volunteers it certifies will comply with all of the requirements set forth in 45 CFR 155.225, such as providing information about the full range of QHPs and insurance affordability programs for which consumers are eligible, acting in the best interests of the consumer assisted, and not charging a fee for its CAC assistance.

Organizations seeking to become CAC organizations in states operating State-based Marketplaces should contact the State-based Marketplace to learn more about the applicable procedures.

64. Is the CAC program mandatory?

ANSWER: Every Health Insurance Marketplace must have a CAC program. However, it is completely voluntary for any organization to participate in the CAC program as a designated organization.

65. If a CAC application is denied, is there a process to appeal?

ANSWER: There is no appeal process for the denial of an application to be designated as a CAC organization in the FFM or SPMs. However, CMS will notify organizations whose applications were not approved for designation in an FFM on potential next steps, including possible referrals to the Champions for Coverage program. As a Champion for Coverage, an organization will have the opportunity to help educate people about the Marketplace and where they can enroll for coverage. An organization which thinks it may have filled out the application incorrectly or that subsequently it meets the criteria to be a CAC designated organization may submit a new application at any time.

66. Will a designated CAC organization in the FFM or an SPM have to declare how many individual staff or volunteers it has certified or intends to certify as application counselors?

ANSWER: Designated CAC organizations are not required to declare how many individuals they certify or intend to certify as CACs. Upon request by the FFM or SPM, designated CAC organizations may be required to provide the FFM or SPM with a list of the organization's certified CACs.

- 67. Must national organizations that apply to become a designated CAC organization in multiple FFM and SPM states be designated in each state they plan to provide consumer assistance?**

ANSWER: A national organization may apply to become a designated CAC organization for all of the states in which the FFM or an SPM is operated, or may apply to be designated separately for each state. Organizations seeking to become CAC organizations in State-based Marketplaces should contact the State-based Marketplace to learn more about the applicable procedures.

- 68. Must a CAC organization that is designated by the FFM be listed on the HealthCare.gov website?**

ANSWER: Generally, yes. A designated CAC organization must comply with the process established for operating the CAC program. The FFM will post the names, locations and contact information of all designated CAC organizations in the FFMs and SPMs on <http://HealthCare.gov>, with a Find Local Help tool, unless an organization specifically requests at the time of its application that its information not be posted. This will allow consumers to search for assistance personnel in their area that includes CACs.

- 69. Are the CAC program requirements different in the State-Based Marketplaces (SBMs) and Federally-Facilitated Marketplaces (FFMs)? Will SBMs have flexibility to expand who can serve as CACs beyond what is allowed in FFMs?**

ANSWER: SBMs have a great deal of flexibility in the development and operation of their CAC programs, but they must do so consistently with the provisions of 45 CFR 155.225. SBMs may designate organizations to certify staff and volunteers, certify CACs directly, or do both. SBMs do have flexibility to determine which organizations and individuals may be CAC designated organizations or CACs. In addition, SBMs may use the FFM CAC training, but are not required to.

- 70. On the application to become designated as a CAC organization in the FFMs, will the parent organization need to list each of its locations?**

ANSWER: Parent organizations applying to become a CAC designated organization in the FFM or SPMs should list only the locations where consumer assistance services will be provided.

- 71. Will technical assistance be available if errors are encountered while completing the online application to become designated as a CAC organization in the FFMs?**

ANSWER: Questions for assistance regarding the application process in the FFM and SPMs may be directed to CACQuestions@cms.hhs.gov. CMS will make every attempt to address questions in a timely manner. Answers to general questions regarding the CAC program are

posted on Marketplace.cms.gov at: <http://marketplace.cms.gov/help-us/common-questions-about-cac-designation.pdf>.

- 72. In a Federally-facilitated Marketplace (FFM) state, to qualify to be a CAC designated organization, must an organization list a physical location where consumers can go to receive assistance? What if an organization does not have a physical location, but operates a national toll-free helpline?**

ANSWER: Yes, an organization must have a physical location where consumers can go to receive assistance. For the section on the application about how the general public may contact the organization, the organization may simply list its phone number where consumers can reach the organization to receive information enrollment assistance in the Marketplace. However, for the section on the application about how the Marketplace may contact the organization, a location as well as a telephone number and email address must be listed.

- 73. Is there a fee to become a designated CAC organization?**

ANSWER: In FFM and SPMs, there are no fees associated with becoming a designated CAC organization or a CAC staff or volunteer.

- 74. Will organizations have to re-apply for CAC designation in the FFM and SPMs on an annual basis? Will there be requirements to maintain certification for individual CAC counselors?**

ANSWER: CMS expects to issue guidance on recommended recertification and continuing education for certified application counselors in FFM and SPMs.

- 75. Once certified by a designated CAC in the FFM, will a certified application counselor be able to transfer to another designated CAC organization and assist consumers in the FFM using the same certification? Or will the individual CAC be required to retake the training and examination to receive another certification with the new CAC designated organization?**

ANSWER: In the FFM and SPMs, individual CACs will not have to retake the examination, but they must still be certified by the new designated organization. Individual CACs may present the training certification they previously received that indicates they successfully passed the CMS training to the new designated organization. The new CAC designated organization will then have to recertify these individual CACs.

- 76. Can CACs in the FFM or SPMs refer a consumer to agent or broker?**

ANSWER: Yes, CACs may make referrals to other assistance personnel, including agents and brokers, if a consumer requests it or if the consumer requires more information or assistance than the CAC is able to provide. However, all CACs must perform all the required

CAC duties, including providing information to individuals and employees about the full range of QHP options and insurance affordability programs for which they are eligible, and assisting individuals and employees with applying for and enrolling in coverage in a QHP and for insurance affordability programs through the Marketplace. Therefore, for example, it would not be permissible for a CAC to provide assistance only with Medicaid/CHIP applications and to refer QHP-eligible consumers to agents or brokers.

77. Is it possible for consumers to appoint a CAC to act on their behalf as an authorized representative in the FFM and SPMs?

ANSWER: Yes, it is possible. Consumers may appoint CACs to act on their behalf as authorized representative in the FFM and SPMs. All state and local laws, as well as all Marketplace regulations and guidance governing authorized representatives would apply.

78. Are designated CAC organizations in the FFM and SPMs required to have liability insurance to perform their required duties?

ANSWER: No. Having liability insurance is not a requirement for an organization to be designated a CAC organization in the FFM and SPMs.

79. May a CAC provide assistance to consumers in multiple FFM and SPM states?

ANSWER: CACs may be certified to provide consumer assistance in the state or states being served by their affiliated CAC designated organization.

80. Should a CAC designated organization have the capacity to access the Marketplace website while providing consumer assistance?

ANSWER: Yes, a CAC should be able to access the Marketplace website regardless of the method by which they provide assistance to consumers, such as over the phone or in-person.

81. Are hospitals with contractual relationships with a health plan issuer eligible to become CAC designated organizations in the FFM and SPMs?

ANSWER: Yes. Having a conflict of interest does not bar an organization from participating in the CAC program. As long as the CAC discloses any relationships they or their organization has with QHPs or insurance affordability programs, or other conflicts of interest, to each consumer they assist, an organization that meets the other criteria will be eligible to participate. Regardless of a designated CAC organization's relationships with health plans, every CAC is required to give information to consumers about all of the QHPs and insurance affordability programs for which the consumer is eligible. CACs must also act in the best interest of consumers, which means that they cannot steer them toward or away from any particular plan.

- 82. Will there be a way to identify individuals that provide consumer assistance in the FFM and SPMs?**

ANSWER: Yes. In the FFM, all assistance personnel will be assigned an identification number. Consumers should enter the assister's identification number on the FFM application. Among other things, this identification number will indicate to the FFM whether a consumer received assistance from an agent or broker, Navigator, certified application counselor, or non-Navigator assistance personnel (also known as in-person assistance personnel).

- 83. Will the FFM and SPMs give any special preference to consumers that receive application assistance from a CAC?**

ANSWER: No. All applications for coverage in the Marketplace will be treated the same.

- 84. What happens after an organization submits an application to become a CAC designated organization in the FFMs?**

ANSWER: CMS will review each application to determine whether the information provided by the organization demonstrates that the organization meets the criteria set forth in the regulation and guidance. Upon conclusion of the review, each organization will be notified of the result.

- 85. What are the next steps after an organization is designated as a CAC organization in the FFM and SPMs?**

ANSWER: In the FFM and SPMs, once an organization is designated as a CAC organization, the organization's contact information will be posted on CMS's website. The organization should begin the process to certify the staff and volunteers it wants to serve as CACs. Among other things, this process will involve ensuring that these staff and volunteers have completed the required CMS-approved training and examination, checking that all CAC staff and volunteers have submitted conflict of interest disclosures to the organization, and ensuring that each CAC staff member or volunteer has signed a CAC agreement with the organization. Once the organization has certified its CACs, these staff and volunteers may begin to assist consumers as CACs.

In order for an organization's staff and volunteers to be certified as CACs and ready to help consumers when enrollment through the Marketplace opens on October 1, 2013, we recommend that the organization have its staff and volunteers begin the CAC training as soon as possible, and that the organization begin the certification process as soon as possible. However, a designated CAC organization may certify staff and volunteers as CACs at any time.

86. What will the CAC training consist of?

ANSWER: All individuals who carry out the consumer assistance functions will receive training on topics including: QHPs and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual plans; the range of insurance affordability programs; tax implications of enrollment decisions; eligibility requirements for premium tax credits and cost-sharing reductions; contact information for federal, state and local agencies for consumers seeking additional information about specific coverage options not offered through the Marketplace; basic concepts about health insurance and the Marketplace; and privacy and security standards for handling and safeguarding consumers' personally identifiable information.

87. Will CAC counselors be required to obtain an insurance license to assist consumers? Will an insurance license be issued once they successfully complete the CAC training and test?

ANSWER: CACs in the FFM and SPMs do not need to be licensed as insurance agents and brokers and are not required to obtain errors and omissions coverage. CACs will not be issued an insurance license upon completion of their CMS-approved training and examination. CACs, like Navigators and non-Navigator assistance personnel, will not sell, solicit, or negotiate insurance. Rather, they will offer expertise on both the enrollment process itself (such as how the consumer creates an account and how to compare plans) and information related to health plans and insurance affordability programs that meet the consumer's needs. In FFM and SPMs, CACs will be issued a certificate of completion by the Medicare Learning Network, which hosts the training, and a certificate from their organization indicating that they have been certified as a CAC.

88. Can a health insurer or Qualified Health Plans serve as a designated CAC organization?

ANSWER: In an FFM or SPM, issuers and QHP organizations cannot serve as CACs because these entities do not meet the criteria to be designated as CAC organizations under CMS's subregulatory guidance. However, the CAC rule does not prohibit any individual working for an issuer or plan from being a CAC, which means that the individual could volunteer for a designated CAC organization that does meet the eligibility requirements in the subregulatory guidance, as long as he or she discloses to potential applicants any relationships he or she or his/her sponsoring organization has with QHPs or insurance affordability programs, as well as provides information to consumers about all options, acts in the consumer's best interest and forgoes charging fees for the assistance provided in connection with helping consumers with health insurance. In an SBM state, those interested in being a CAC designated organization or an individual CAC should check with their SBM.

89. Can staff of a health insurer or a QHP be certified as an individual CAC?

ANSWER: The FFM, including SPMs, will only designate organizations to be CAC organizations. The designated CAC organizations will certify individual staff members or volunteers to be CACs; the FFM will not certify individual CACs. In the FFM and SPMs, health insurers or QHPs will not be designated as CAC organizations.

An individual who works for a health insurer or QHP is not prohibited from also working for or volunteering for an organization that is a designated CAC organization and, in that capacity, is not prohibited from being certified as an individual CAC. However, as is true for all individual CACs, he or she must disclose to the CAC designated organization and to potential applicants any relationships he or she or his/her sponsoring organization has with insurers or QHPs or insurance affordability programs, as well as provide information to consumers about all options, act in the consumer's best interest and forgo charging any fee or compensation for the assistance provided in connection with helping consumers with health insurance as a CAC.

In an SBM state, those interested in being a designated CAC organization or an individual CAC should check with their SBM.

90. Will someone with a criminal record be able to qualify as a CAC counselor?

ANSWER: Fraud and the privacy and security of consumers' personal identifiable information are a top priority. Designated CAC organizations must have processes in place to screen their staff members and volunteers who are certified application counselors to ensure that they are trained to protect personally identifiable information. Screening could involve background checks, calling past employers for references, checking government-issued identification, or other tools that will tell the organization whether the organization can trust its staff and volunteers to handle any private consumer information responsibly and securely, to adhere to all CAC program requirements and standards, and to act in the best interest of the consumers they assist.

91. Is there a place to find out which state will operate a Federally-facilitated Marketplace (FFM), State-Partnership Marketplace (SPM) and State-based Marketplace (SBM)?

ANSWER: Yes. For information about the states in which HHS will operate a FFM in 2014, please reference the CCIIO website at <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/state-marketplaces.html>.

92. If a group wanted to inform consumers about the Marketplace and help them apply for and enroll in coverage, would the group be best served by becoming a designated CAC organization or by joining another organization that is a designated CAC?

ANSWER: In FFMs, including SPMs, if a group wants to take on the responsibility of certifying and overseeing its staff and volunteers, it would be well-suited to serve as a designated CAC organization as long as it meets the criteria for designation. If the group would prefer not to perform those functions, or if the group does not meet the criteria to be designated as a CAC organization, its members may seek to affiliate themselves as staff or volunteers of another organization that has been designated as a CAC organization. However, there is no guarantee that any designated CAC organization will accept any given staff or volunteer applicant. In SBMs, because the Marketplace may have structured their CAC program differently, you should contact your state's Marketplace to see what is best for you and your organization.

93. Will CMS provide marketing materials for CAC designated organizations to use?

ANSWER: We do not anticipate providing CAC organizations with marketing materials as part of the CAC organization designation process or during the time in which the organization serves as a designated CAC organization. The main duties of CACs will be to provide information and assistance to consumers applying for and enrolling in coverage; CACs won't be required to perform outreach to consumers. However, we encourage those who wish to obtain official resources about the Marketplace to visit our website at: <http://marketplace.cms.gov/getofficialresources/get-official-resources.html>.

94. Will paper applications to be a designated CAC organization be made available?

ANSWER: Only on-line applications to be a designated CAC organization are available at this time. You may access the on-line CAC application at <http://marketplace.cms.gov/help-us/cac.html>.

95. Are there any licensing requirements for the designated CAC organization or individual?

ANSWER: No, there are no licensing requirements to be a designated CAC organization or individual certified application counselor in the FFMs and SPMs. CAC designated organization must meet the criteria outlined in guidance and its staff and volunteers must take the CAC training and pass the examination to obtain certification. The CAC designated organization and its certified CACs must comply with the CAC requirements, but that does not include any licensing requirements.

96. Are CACs able to charge for their services?

ANSWER: No, CACs cannot impose any charge on consumers for any assistance related to the Marketplace.

97. Should CACs develop a relationship with Navigators? Are Navigators a resource for CACs?

ANSWER: We encourage CACs to develop and maintain relationships with local Navigators. Navigators are a great resource for CACs to provide referrals in the event that the CAC is not able to provide the assistance a consumer requires. For example, if a consumer requires disability accommodations or language assistance that the CAC is not able to provide, a CAC should start by trying to locate a geographically accessible Navigator, since Navigators are required to be trained and tested on a disability and language access curriculum and to comply with accessibility laws and laws regarding culturally and linguistically appropriate services as recipients of federal funding.

98. Do CAC Organizations have to be available 24/7?

ANSWER: No, CAC organizations are not required or expected to provide CAC services outside normal hours of operation. In addition, after it designates an organization, the FFM and SPMs will post on their websites an organization's hours of operation along with its contact information.

99. Are CACs prohibited from registering consumers to vote while providing enrollment assistance in the Marketplace?

ANSWER: Nothing prohibits CACs from registering consumers to vote.

100. Can CACs assist consumers who have Medicare?

ANSWER: Yes, CACs can assist Medicare beneficiaries. However, CMS will not provide detailed training materials on Medicare eligibility and enrollment. Therefore, we encourage CACs to refer consumers to other resources such as 1-800-MEDICARE or [Medicare.gov](https://www.medicare.gov) for the Medicare Ombudsman Center and other Medicare-approved resource assistance (which may be found on the internet at: <https://www.cms.gov/Center/Special-Topic/Ombudsman-Center.html>) when it is in the best interest of the consumer to do so.

101. Are there penalties if an organization is not a designated CAC, but represents itself as one?

ANSWER: Yes. An organization that misrepresents itself as a designated CAC to the public may be subject to fraud charges or violations of other applicable federal laws.

102. Is a Champion for Coverage the same as a CAC?

ANSWER: No. Champions for Coverage will help educate people about the Marketplace. They will not assist consumers with applying for and enrolling in coverage, which are the main duties of CACs. Champions for Coverage are also not required to complete the CMS-

approved training and examination that CACs must complete. To become a Champion for Coverage, go to <http://marketplace.cms.gov> and click on "Partner with Us."

103. **Will CACs have to provide information to consumers in a manner that is accessible to individuals with disabilities and culturally and linguistically appropriate (CLAS Standards)?**

ANSWER: CACs are encouraged to be able to provide information to consumers in a manner that is accessible to individuals with disabilities. However, if CACs are unable to do so, they must make the appropriate referral to a Navigator, non-Navigator assistance personnel or the Marketplace call center. Likewise, if CACs are unable to provide information that is culturally and linguistically appropriate to the needs of the population being served, they must make the appropriate referral to a Navigator, non-Navigator assistance personnel or the Marketplace call center. As recipients of federal funding, Navigators are required to have standards in place to provide culturally and linguistically appropriate services and ensure access by person with disabilities.

104. **I am currently enrolled in Medicare. Do I need to apply for coverage through the Marketplace for 2014?**

ANSWER: If you are enrolled in Medicare, you already have coverage and do not need to take any action to apply for coverage through the Marketplace. Your current Medicare coverage meets the individual requirements to maintain coverage starting in 2014.

105. **My organization has volunteers who are federal employees. Are those federal employees eligible to be an individual CAC counselor?**

ANSWER: All federal employees must comply with federal conflict of interest and ethics standards and requirements. Whether or not it is permissible for a federal employee to serve as a CAC counselor may vary depending on the agency or entity for which the federal employee works. Each federal employee who wishes to be a CAC counselor in their capacity as a volunteer for a designated CAC organization should check with his/her agency's ethics counselors.

106. **May designated CAC organizations work with Navigator grantees in their geographic area?**

ANSWER: Yes. For example, a hospital that is a designated CAC organization may establish a relationship with the local Navigator grantee to coordinate outreach if the hospital wishes to conduct outreach (CAC designated organizations may but are not required to do outreach), use each other's space for assisting consumers, etc. Navigator grantees should be careful, however, not to use Navigator grant funding to pay for expenses for the CAC program or to compensate any staff or volunteers of either organization for performing CAC functions.